IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

WP(C).No. 30513 of 2004(G)

OS.117/2001 of PRL.MUNSIFF COURT, CHERTHALA

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PETITIONER:

KURIAKOSE, S/O.JOSEPH, KOYIPPARAMBIL,
NADUBHAGOM MURI, THYCATTUSSERY
VILLAGE, CHERTHALA.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS:

ANNAMMA THOMAS, S/O.T.O.THOMAS,
PAZHAYAKADAVILAYA, THATTAMPARAMBIL
NIKARTHIL, PALLIPPURAM MURI AND POST,
CHERTHALA.

BY ADV. SRI.JAICE JACOB
SMT.VEENA KRISHNAN
SRI.M.S.THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF PLAINT IN OS 117/01 OF THE MUNSIFF'S COURT, CHERTHALA DT. 29.1.2001

EXT. P2 TRUE COPY OF IA 2789.04 IN OS 117/01 DT. 27.9.04 DO.

EXT. P3 TRUE COPY OF OBJECTION FILED BY THE RESPONDENT IN OS 117/01 DT. 4.10.04

EXT. P4 TRUE COPY OF ORDER IN IA 2789/04 IN OS 117/01 DT. 6.10.04 OF DO.

/TRUE COPY/

K.P. Balachandran, J.

W.P.(C)No. 30513 of 2004 G

JUDGMENT

Petitioner is the plaintiff in O.S.No.117/01 on the file of the Munsiff's Court, Cherthala. He filed an application for amendment of the plaint as I.A.No.2789/04, incorporating a prayer for mandatory injunction directing the respondents to restore 446.4 M sand removed by him from the scheduled property, violating the injunction order or in the alternative for a decree for recovery of compensation for the sand so removed. A report had been filed in that case as regards removal of sand of so much quantity, on 7.6.2002 by the Commissioner. But, the amendment application was filed only on 27.9.2004, while the suit stood posted for trial in the list on 29.9.2004. It was, in view of the culpable delay in taking appropriate steps at the appropriate time, that the trial court

dismissed the amendment application. However, the fact remains that the suit is not yet disposed of. Considering the entire circumstances of the case, I am of the view that the amendment sought for has to be allowed in the best interest of justice, but on heavy terms.

2. In the result, I order that in reversal of Exhibit P4 order passed by the court below, Exhibit P2 amendment application shall stand allowed, in case an amount of Rupees three thousand is deposited by the petitioner by way of costs to the respondent. The amount of costs has to be deposited before the trial court positively within fifteen days from today, for payment to the respondent. In case of failure, Exhibit P4 order shall stand confirmed and this writ petition dismissed. In the event of the petitioner depositing Rupees three thousand as directed above and the amendment being consequently allowed, the respondent shall have the liberty to file additional written statement,

answering the claim and both sides shall have the liberty to adduce appropriate evidence in support of their pleadings in the court below.

This writ petition is disposed of as above.

8th February, 2007 (K.P.Balachandran, Judge)

tkv